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# RIGHTS OF THE CHILD

## Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos

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## Introduction

1. The Commission on Human Rights, at its fifty-second session, in resolution 1996/85 of 24 April 1996, welcomed the report of the Special Rapporteur on the sale of children, child prostitution and child pornography E/CN.4/1996/100) and noted the recommendations made therein. In the same resolution, the Special Rapporteur was requested to submit an interim report to the General Assembly at its fifty-first session (A/51/456) and a report to the Commission on Human Rights at its fifty-third session.

2. The Commission, furthermore, encouraged States to take measures aimed at eliminating sale of children, child prostitution and child pornography as well as related phenomena and to enhance bilateral and multilateral cooperation to tackle effectively transborder problems associated with the sexual exploitation of children. In this connection, the present report contains a review of recent national and international initiatives taken to combat the sale and commercial sexual exploitation of children. On the basis of these developments, the Special Rapporteur has attempted to identify existing problems at the national and international levels in the field with a view to making action-oriented recommendations to all Governments.

## I. WORKING METHODS AND ACTIVITIES

3. The present report focuses on commercial sexual exploitation of children worldwide, since the Special Rapporteur considers that the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, was a milestone in the protection of children and played a decisive role in raising the awareness of the international community about the alarming proportions of this aspect of child abuse in all countries of the world. It is clearly established that there exists hardly any region, country, city or village, where child abuse does not occur. The Special Rapporteur envisages exploring the issues of sale of children, for adoption and otherwise, as well as the plight of street children, in her future reports. In her next report, and in line with her choice of catalysts, the Special Rapporteur intends to focus on education and the media, including the Internet.

4. On 21 July 1995, the Special Rapporteur sent to Governments and organizations a questionnaire concerning the justice system and its implementation at the national level. Replies were received from 12 Governments and 5 organizations and their comments were included in an earlier report submitted by the Special Rapporteur (E/CN.4/1996/100). Since that report was presented, replies have been received from the Governments of Argentina, Austria, Canada, Chad, Cyprus, Germany, Iran (Islamic Republic of), Jamaica, Jordan, Morocco, Panama, the Philippines, the Republic of Korea, the Russian Federation, San Marino, Spain, Sri Lanka, Thailand, Turkey, Ukraine and Uzbekistan. Replies were also received from ECPAT (End Child Prostitution in Asian Tourism) and Pax Romana, whose comments are included in the present report. The questionnaire and a tabulated summary of the replies of Governments are contained in the annex.

5. With a view to finding durable and concrete solutions to the problem of the sale and commercial sexual exploitation of children, the Special Rapporteur is making an urgent appeal to Governments, non-governmental organizations, and all concerned agencies and individuals, to keep her informed on a regular and sustained basis of developments in matters under her mandate, including specific situations of child abuse in any country. This would be of immense value to her in the performance of her work especially in view of the voluminous information coming in from all over the world as a result of the heightened awareness generated by the 1996 World Congress against Commercial Sexual Exploitation of Children. The Special Rapporteur further calls upon all Governments, through the Commission on Human Rights, to cooperate with her by replying promptly and openly to her future communications with a view to her making recommendations to redress situations at the national level.

6. In accordance with the Commission's recommendation in its resolution 1996/85, the Special Rapporteur participated in and provided substantive input to the World Congress against Commercial Sexual Exploitation. The Special Rapporteur would like to draw the attention of the Commission to particular concerns raised in her keynote address to the Congress, which is reproduced in full in the official report of the Congress (Part II).

Field visits

7. In its resolution 1996/85, the Commission on Human Rights, appealed to all Governments to cooperate with and assist the Special Rapporteur and to furnish all information requested, including by inviting her to undertake country visits. In this connection, the Special Rapporteur draws the attention of the Commission to the report on her visit to the Czech Republic from 20 to 25 May 1996 (E/CN.4/1997/95/Add.1) and to the report on her mission to the United States of America from 9 to 20 December 1996 (E/CN.4/1997/95/Add.2).

8. The Special Rapporteur would like to express her appreciation to the Governments of the Czech Republic and the United States of America for their substantive and logistical cooperation during the visits, which enabled the Special Rapporteur to report to the Commission in an objective and impartial manner on the issue of commercial sexual exploitation of children in those countries.

9. In 1997, the Special Rapporteur hopes to take a closer look at situations of children in Latin America, Asia and Africa in order to report to the Commission on Human Rights on developments in these regions.

## II. BRIEF REVIEW OF CONCERNS

### A. Causes

10. The causes of the commercial exploitation of children encompass a wide range of conditions and pernicious practices inimical to the child's interests, from economic needs to socio-cultural discrepancies, including gender bias and other forms of discrimination based on race, caste or class.

They have already been discussed extensively in all the previous reports. The important thing to remember is that each situation usually involves the interaction of a cause with one or more of the others and that conditions vary not only from country to country but even within a country itself.

## B. Characteristics

11. There are certain characteristics that typify most activities on commercial sexual exploitation of children. These have been discussed in the interim report of the Special Rapporteur to the General Assembly (A/51/456). The Special Rapporteur would like to add, however, that the contagious nature of the phenomenon of child abuse is reaching epidemic level, as illustrated by some shocking developments in certain parts of Western Europe. Another recent development which is quite frightening is the occurrence of increasingly horrendous practices of commercial sexual abuse against younger and younger children, including infants.

## C. The victims and the abusers

12. The Special Rapporteur considers knowledge about the child victims and the exploiters and users as key elements in any campaign against child abuse and exploitation. The vulnerability of children primarily lies in the attendant circumstances, such as belonging to marginalized and/or dysfunctional families. Street children are considered to be at particularly high risk. Recent events, however, have brought to light a radical departure from this pattern. They include the growing use of force or kidnapping as a means of drawing children into the net of exploitation and abuse. Another significant development is the growing number of boys involved in prostitution and pornography in most parts of the world.

13. The exploiters are the persons who benefit in one way or another from supplying the market for children. There is a departure from the traditional profile of the brothel "madam" or pimp in that there is now greater involvement of tour organizers, leaders and members of units of organized crime, corrupt administration officials and, most unfortunately, also of parents and caretakers of children.

14. The users and clients have been identified as being primarily paedophiles, preferential child abusers or regular situational customers, tourists, migrant workers, military personnel, and others.

15. Special attention needs to be given to the matter of paedophilia because of consistent reports that the average paedophile abuses a far greater number of children than other clients. This problem is further complicated by the recognized greater difficulty of rehabilitating paedophiles, especially those whose behaviour is compulsive. Research findings have established that 70 per cent of "career" paedophiles reoffend, often again and again. For example, a former teacher at Abberley Hall preparatory school in Herefordshire in the United Kingdom, who is currently being investigated, allegedly claimed that he had had sex with "hundreds and hundreds" of boys.

16. In her interim report to the General Assembly, the Special Rapporteur included an examination of the motivations of child sexual abuse in a

commercial context. Once again, she wished to point out that a better understanding of these motivations would be of great help for the development of any programme or initiative to address the issue.

### D. Effects on children

17. In her report to the General Assembly, the Special Rapporteur included an enumeration and discussion of some of the devastating effects of commercial exploitation of children. She considers that awareness-raising strategies, the sensitization of the public in general and advocacy for children can be truly effective only if coupled with information on how deeply scarred children are by these incursions into their personhood. Discussion of this issue would also dispel the common misconception that the natural resiliency of children enables them to get over the trauma easily.

18. A deep understanding of the effects on the physical, mental and psychological health of children who are the subject of commercial sexual exploitation would also underscore the importance and the desirability of preventive rather than remedial measures.

## III. NATIONAL AND INTERNATIONAL DEVELOPMENTS

### A. Legislative developments

19. States are increasingly beginning to introduce legislation and programmes dealing specifically with the sale of children, child prostitution and child pornography. Among those which continue to treat victims under the more general category of children in need of care, there is evidence to suggest a growing awareness of the inadequacies of such a generalization. In Thailand, a law-revising committee is working on the amendment of the Penal Code and the Criminal Procedure Code relating to child exploitation, child pornography, witness protection programmes and special procedural safeguards prior to and during both interrogatory and trial stages.

20. The Government of Panama reports the adoption of Act No. 15 of 1990 relating to the rights of the child. As a result, certain activities involving minors, such as rape, sexual molestation and prostitution, have become aggravated offences. The Government also reports that the adoption of this legislation does not seem enough to prevent such practices in view of the sophisticated communications technology with which organized crime is now equipped.

21. The Government of Canada has informed the Special Rapporteur that it is likely to introduce a bill proposing changes with a view to protecting children from adults who seek children for sexual services or who exploit young prostitutes for economic gain. In the United States of America, the State of California, taking the lead in a nationwide push to enact tougher sex-crime laws, is set to pass a measure requiring "chemical castration" of repeat child molesters. The bill is expected to face constitutional challenges. In an attempt to ensure effective punishment, the Government of the United Kingdom has increased penalties and police powers with regard to child pornography and paedophilia, including arrest without warrant and extradition of paedophiles.

22. In New Zealand, the Evidence Amendment Act 1989, underlines the fact that the specific procedures followed in child sexual abuse cases do not result in diminishment of the inquisitorial powers of the judge.

23. Increasingly, collaborative efforts in regard to law enforcement and sharing information on legislation and strategies for law enforcement are having an impact on strengthening legal controls. Sri Lanka's recent amendments to the Penal Code, which strengthened the legislation on trafficking and sexual exploitation, borrowed from legislation in the Philippines in the definition of new offences on sexual abuse; and in introducing the controversial concept of mandatory minimum sentences for sexual violence the Sri Lankan legislation was influenced by Indian Penal Law.

24. Recent initiatives in Europe in regard to extraterritorial jurisdiction of courts to prosecute offenders for sexual offences committed by their nationals overseas are an important development that can encourage accountability in law enforcement within countries and international cooperation in law enforcement. In addition to country initiatives mentioned in her earlier reports, the Special Rapporteur was informed that in Ireland, there are currently two bills before Parliament: one would make it an offence for any person in Ireland to organize travel abroad for the purpose of child sex tourism; the other would extend the application of national criminal law to acts by Irish citizens involving foreign children abroad. Similar developments in New Zealand now allow for sanctions for criminal acts against children committed abroad, as well as for the promotion and organization of child sex tours in the country.

25. The Special Rapporteur also notes that, in Belgium, the 13 April 1995 Act includes provisions for combating traffic in persons and child pornography aimed at sex tourism, international networks of traffic in persons and child pornography. The provision on extraterritoriality allows a Belgian national or a foreigner who is found in Belgium to be prosecuted for sexual crimes committed abroad against minors under 16. Belgium adheres to the principle of double incrimination, whereby such acts are equally punishable in the other country. The Ministry of Foreign Affairs has given detailed instructions to all Belgian diplomatic and consular posts as to the measures to be taken when a Belgian national is detained for such offences abroad.

26. Some Governments, such as that of Uzbekistan, have informed the Special Rapporteur that these problems do not generally exist in their countries, and hence do not need special legislation and programmes to protect child victims. In this connection, the Special Rapporteur strongly feels that, despite the perceived absence of the phenomenon in any country, appropriate preventative measures should be in place to ensure that no future encroachment of children's rights will occur. For instance, the Government of Jordan is currently preparing a draft Children's Act, although the Government does not consider the sale of children, child prostitution and child pornography to exist as a social problem in that country.

## B. Programmes and initiatives

27. Some countries have started response mechanisms to children victims of abuse through multidisciplinary teams made up of professionals who are experts in the area of social work, medicine, psychiatric health and law enforcement. Among these countries is the United States of America. 1/ The multidisciplinary approach is also used by the Government of Argentina, which has organized a coordinated system to deal with all aspects of prevention, promotion, training of human resources, active participation of the community and the building up of a network of services. The National Council for Children and the Family is the technical and administrative body in Argentina responsible for the implementation of programmes, which have been effective. This multidisciplinary approach has also been pursued in Belgium with regard to the sale and exploitation of children. An "Interdepartmental Coordination Cell for the Fight against International Traffic in Persons" has been set up under the direction of the Minister of Justice. In order to allow for effective coordination this approach allows not only for aspects of criminal law, but also for elements of social policy or fiscal law to be taken into account. The idea of creating a network of specialized services and institutions focusing on the specific problems of children was also proposed by the Government of the Russian Federation.

28. Recently the President of the Philippines promulgated Executive Order No. 275 creating the Special Committee for the Protection of Children Against Sexual Abuse and Exploitation. This special committee has the function, among others, of reporting to the President on action taken to address specific issues brought to the Committee's attention concerning child abuse and exploitation by directing other agencies to respond to the problem. Government agencies and child rights advocates also launched, in October 1996, the Network Against Sexual Abuse of Children (NASAC), a massive network to fight the persistent menace of child prostitution.

29. The Government informed the Special Rapporteur of Sri Lanka that a Task Force at the national level appointed by the Minister of Information has been working to eliminate child prostitution. The Monitoring Committee on the Implementation of the Children's Charter pays serious attention to child abuse, monitors follow-up action in serious abuse cases and works closely with non-governmental organizations. The Government also informed the Special Rapporteur that awareness programmes are being implemented by the Department of Probation and Childcare Services. Children are becoming aware that they can complain and are learning to whom they should complain.

30. Other States that have initiated awareness-raising programmes include Germany, where the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, has carried out an awareness campaign entitled "Keine Gewalt gegen Kinder" ("Stop violence against children") focusing on child pornography and prostitution, sexual abuse of children, and neglect and maltreatment of children in the family, using means of modern mass communication. The campaign drew a huge and almost wholly positive response and generated considerable stimulus for regional and local initiatives. In Belgium, sensitization of children is being achieved by means of posters, which encourage child victims to talk to someone about what is happening to them. The posters mention telephone numbers of "Ecoute enfants" (Listening to

Children), a telephone service covering the entire French-speaking part of the country and staffed by professionals. The approach differs depending on whether the target audience is under or over the age of 12. Furthermore, in the French-speaking community an extensive prevention campaign called "Article 34", has targeted a third audience, in addition to the general public and children: the professionals who work with children. In the Flemish-speaking community an awareness campaign on sex tourism and child prostitution has been started by the "Kind en Gezin" (Child and Family) organization, the main objective being to expose and denounce existing networks of child prostitution, without sensationalism.

31. In Australia, an airport education campaign is being carried out by customs officers. The non-governmental organization ECPAT (End Child Prostitution in Asian Tourism) pointed to the problem faced by Australia as a country of origin of child sex tourists. In 1994, three Australians were arrested in Asia for child molestation, but thousands are believed to be involved. The Customs Officers are providing leaflets to every person leaving Australia, informing them of the law and their responsibilities. The Government of Australia has provided funding to non-governmental organizations for development, training and education projects working against the forces which drive children into prostitution.

32. The preventative value of awareness programmes aimed at children is beginning to be recognized by a number of States. In Australia, the organization Australians Against Child Abuse has run many such programmes in schools. These have included completing activity manuals to raise children's awareness of their right to say "no" to behaviour which makes them feel uncomfortable, and how to recognize and avoid potentially dangerous situations. Guest speakers such as policemen or social workers have talked to the children. Small theatre groups have interacted with the children by demonstrating, through drama, different ways in which they can protect themselves. The "Staying safe with people" project, a programme to teach primary school children about sexual abuse, was launched at a Melbourne school late in 1996. The five-week course is being taught to students in years five and six but will be adapted for younger grades.

33. The media in India has begun to play an active role in informing the general public of the facts concerning child prostitution. Articles on the subject, which are now appearing regularly in the popular press in India, are doing much to break the silence which has long shrouded such an understandably sensitive subject.

34. In Thailand, a special task force was set up specifically to suppress the commercial sex business, child sex abuse and prostitution and a Child's Rights Protection Division was established within the office of the Attorney General. In Nepal, some non-governmental organizations are working to do away with the Deuki system, a tradition in west Nepal where girls are forced into the flesh trade after being offered to a temple. A girl becomes a Deuki when she is brought from a poor family to be offered to the gods. After a girl becomes a Deuki, she cannot marry and often engages in prostitution for economic support.

35. The Special Rapporteur welcomes the establishment on 20 November 1995 of the Cambodian National Committee for Children, the coordinating, planning and monitoring body concerned with children's rights, composed of representatives of various ministries. The Australian Federal Police, who are experienced in dealing with cases of exploitation of children have taken the initiative of training police officers. Such cooperation in this regard with police services in neighbouring countries is encouraged.

36. Thirty-seven states in the United States of America permit the use of video-taped testimony of sexually abused children. Twenty-four states have authorized the use of one-way closed-circuit television testimony in child abuse cases and eight states authorize the use of a two-way system in which the child witness is permitted to see the courtroom and the defendant on a video monitor and in which the jury and the judge are permitted to view the child during the testimony. In Maryland v. Craig, the Supreme Court of the United States held that a state's interest in the physical and psychological well-being of child-abuse victims may be sufficiently important to outweigh a defendant's right to face-to-face confrontation, since the states have a compelling interest in protecting minor victims of sex crimes from further trauma and embarrassment.

37. In the United Kingdom, if the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child or young person in respect of whom any of the offences relating to cruelty to persons under 16 are alleged to have been committed would involve serious danger to his life or health, the child's testimony may be taken by deposition or video-recording. The court may give leave for the child to be cross-examined through a live television link.

38. In the United Kingdom, there are also plans to introduce a national register of convicted paedophiles which could be checked by employers of people who work with children. In the United States, police stations now publicly display lists of convicted paedophiles and, when an offender is released or changes address, local police have an obligation to inform his prospective neighbours. Similar measures have been taken in Canada.

39. The International Labour Organization, in the framework of its International Programme on the Elimination of Child Labour (IPEC), identifies prostitution and other forms of commercial sexual exploitation of children as a form of forced labour. In this connection, IPEC has launched its "Strategy and action against the commercial sexual exploitation of children". ILO has also announced a three-year campaign to draft and have ratified a regional convention against child trafficking, which it hopes to have drafted by 1998 and ratified in 1999. The organization reports that two parts of Asia are rife with child trafficking: the Mekong region, which includes Thailand, Burma, Cambodia, China, Laos, Myanmar, Thailand and Viet Nam, and the South Asian countries of Bangladesh, Nepal, Pakistan and Sri Lanka.

40. The Norwegian branch of Save the Children established an international body in 1996 to monitor child pornography on the Internet and is encouraging "Net surfers" to pass on information that will be handed to the police.

Fifteen expert computer experts were hired to work with child welfare agencies, national police forces and Interpol, and to "surf the Net" in search of paedophiles.

## C. Other developments

41. This section reflects other events that have been brought to the attention of the Special Rapporteur with a view to updating the Commission on what is happening worldwide in relation to her mandate.

Table 1

The child sex market in selected cities

| City (region, country) | No. of adolescents engaged in prostitution (thousands) | Mean "nightly rate" (child up to 15 years old; dollars) |
|---|---|---|
| Bangkok - Pattaya - Ratburi (Thailand) | Approx. 150/220-240 | 350/400 |
| Bombay - Surat - Goa (India) | 50-70/100-130 | 300/350 |
| Rio de Janeiro - Santos - São Paolo (Brazil) | 80-100/130-150 | 350/400 |
| Manila - Pagsanjan - Quezon City (Philippines) | 40-50/approx. 80 | 270-350 |
| Santo Domingo (Dominican Republic), Port-au-Prince (Haiti) | 25-40/approx. 70 | 300/330 |
| Colombo - Galle (Sri Lanka) | 30-35/approx. 50 | 350/370 |
| Moscow | Approx. 1.5/3-3.4 | 400/530 |

Source: Rossüskaya Gazeta, 1 November 1996.

42. It is reported that an ancient tradition still practised in Ghana, is coming under rising criticism both within the country and internationally. It is alleged that in south eastern Ghana there exist several thousand female ritual slaves known as trocosi ("slaves of the gods"), who are given by their families to work as slaves in religious shrines as a way of appeasing the gods for crimes supposedly committed by relatives. In one case, a 12-year-old girl had become a trocosi wife to a priest to atone for her father's crime of raping his niece, through which the girl was conceived. Her duties, which initially involved sweeping the courtyard and learning to cook and farm, would increase to include providing the priest with sexual favours. Owing to the religious nature of the practice, many Ghanians who advocate the abolition of

trocosi bondage are sceptical that a new law would end it. People fear that if the trocosi returned home, they would begin to suffer all kinds of punishment. It is believed that if the gods are not appeased, one person's offence may cause vengeance to be wreaked upon an entire community. 2/

43. In Goma, Zaire, it has been reported that approximately 10,000 youngsters live in the refugee camps without their parents. They are officially classified as "unaccompanied children" by international organizations, but it is alleged that in reality they are used as currency in the makeshift cities. They are either forced to sell themselves to stay alive or their bodies are bartered for food and favours by the adults assigned to look after them. 3/

44. A report on sexual abuse of children in Zimbabwe contains the shocking revelation that babies as young as two months may already be sex objects, which is sometimes condoned by social and cultural practices, such as among the Ngozi, Kuzvorira, Nhaka and Chiramu. The earliest age for this practice is a few months and it mainly affects girls. The report also says that the children may themselves initiate sex and this may start as early as at the age of four years. 4/

45. Zambia is reported to have one of Africa's highest levels of child prostitution, caused to a great extent by the fact that the social adjustment programme dictated by the World Bank/International Monetary Fund donors affected tens of thousands of State jobs, free education and food subsidies, with no buffers to soften the impact. 5/

46. Child prostitution has also penetrated Nigerian society and has reportedly become a thriving business in most Nigerian cities. 6/ It is no longer the case that children from neighbouring West African countries are exported to Nigeria, but trafficking within Nigeria itself is reported. Small girls are often traded as prostitutes to older men. The kidnapping and sale, or attempted sale, of children, particularly in the past two to three years, have assumed frightening dimensions. In a June 1995 report, the NGO Women Rights Monitor (WRM) described an area in central Lagos called the Oju-Ina area, where according to that organization, "teenage girls are reared like fowls for merchants". They are placed in the custody of women who groom them to patronize men sexually. Another area reported on by WRM is Alaba-Arago along the Lagos-Bagadry expressway. Here, small children who have no money are lured by men who take the children to film halls where they are made to watch sex films as an introduction to the rudiments of sex.

47. In the Sudan, articles 35, 38 and 39 of the Convention on the Rights of the Child, regarding the abduction, sale and traffic of children and the situation of children in armed conflicts, are reported to be completely disregarded. The Special Rapporteur on the situation of human rights in the Sudan believes that the racial dimension of the violations and abuse against children who are abducted and sold into slavery, in both northern and southern Sudan, constitutes a particularly grave and alarming circumstance which should be of particular concern from a human rights perspective.

48. Recent events in Belgium have illustrated the fallibility of the commonly-held view that child sex abuse is not a serious problem in Europe,

other than the involvement of European men travelling to Asian countries for this purpose. Following the arrest of Marc Dutroux, a Belgian national, investigations into the abduction of several young girls and the deaths of two of them are continuing in Belgium. The police have arrested several other people in connection with the case and the authorities are investigating links as far away as South Africa and the United States in an attempt to discover the extent of a possible child sex ring. Fresh scandals have rocked Belgium following newspaper reports that a high government official has been linked to police investigations into paedophilia.

49. The Government of Spain informed the Special Rapporteur that there have been some prosecutions of child prostitution in Spain in recent years. Some networks involved in the corruption of minors have been dismantled all over the country. In the United Kingdom, a Roman Catholic priest who sexually abused young boys and subsequently informed other paedophiles about his experiences via the Internet, was sentenced to six years' imprisonment in November 1996. He pleaded guilty to 12 charges of indecently assaulting four boys under the age of 14. Scotland Yard detectives are currently investigating allegations of a paedophile network involving teachers from some of Britain's top public schools.

50. In Greece, over 700 arrests were made in Athens in August 1996, following allegations by the Greek newspaper Eleftheros Typos that, in addition to child prostitutes from the Eastern European countries, under-aged Greek girls had also been forced into prostitution. It was further reported that organized child sex tourism had been channelled from Belgium to Greece by the Belgian paedophile organization "Spartakus", which was alleged to have kept addresses and details of 264 child prostitution brothels in Athens and in the Greek islands. During searches carried out under warrants issued in connection with these cases, children were found chained in brothels in order to facilitate rape. The question which has arisen in this connection is, how many of the 500 Greek girls and 170 boys reported missing in the past five years could have fallen prey to child prostitution recruiters.

51. In Central and Eastern Europe, a report on child sex exploitation uncovered abuse on a horrifying scale. 7/ It alleges that the Lithuanian capital, Vilnius, has about 300 child street prostitutes, and 20 escort agencies provide minors. Riga, the capital of Latvia, has 462 registered sex clubs and there was an estimated 40 to 50 per cent increase in child prostitution in the last six months of 1995. Estonia has an estimated 1,500 child prostitutes. In Russia, estimates of the number of street children in St. Petersburg alone vary from 6,000 to 15,000. In Moscow, girls of eight and upwards sell themselves for food, cigarettes or a miniature of vodka. In Hungary, an estimated 500 young girls work in Budapest and an unknown number work along the main E75 road between Vienna and Budapest. The number of street children in the whole of Eastern Europe is roughly estimated to be at least 100,000.

52. Furthermore, it is reported that European and North American paedophiles are now focusing on Eastern Europe as their new spheres of operation. Bucharest, for example, is high on their list. An influx of Eastern European child prostitutes is also found in large numbers in Western European cities, such as Amsterdam, as well as along the border between the east and west and

along the major trunk roads. Among the novel means of gaining access to Eastern European children for sexual purposes, is the ploys of taking children for so-called summer vacations.

53. The change of system in Eastern European countries has in many cases caused the old structures to collapse. Social welfare systems such as nurseries and hospitals have been forced to close or have been cut back because of shortage of funds. This also applies to municipal or State run leisure and cultural establishments. The old communist child and juvenile organizations have crumbled. In the old system they were responsible for organizing extensive leisure activities for children and juveniles. A vacuum is left behind them as regards meaningful leisure for children under the supervision of adults. Many children, besides suffering from poverty, are to a much greater degree left without adult guidance and care.

54. Generally the laws inherited from the communist societies have many inadequacies regarding sexual abuse of children. Certain forms of sexuality and perversion were considered by definition not capable of existence in the communist system, but only in Capitalist countries. Consequently, they are not even specifically named in the legislation. Instead the laws speak of anti-social behaviour or use similar terms.

55. Another problem encountered directly after the change of system was experienced by Hungary. During the communist era, the authorities were accused of interfering far too much in the private life of people. There has consequently been an exaggerated fear of becoming involved, even in those cases where serious crimes have been committed against children in the private sphere.

56. Trafficking in girls follows the same path as trafficking in women and largely goes in one clear direction, that is to say from East to West. The largest groups of women and girls are being trafficked from Russia, Ukraine and Belarus. They are transported in large numbers westwards. Some of them remain in prostitution in Poland, Hungary and the Baltic States and other former communist countries bordering the West, while others continue further to various Western countries. Women from these bordering States, primarily Czechs, Poles and Hungarians, supplement the traffic towards the West and the final destination is often Germany or the Netherlands. Romanian girls are engaged in prostitution in northern Europe but the traffic in Romanians is generally towards Cyprus, Italy and Turkey.

57. Trafficking in boys predominantly involves Romanian boys, but includes large numbers of Polish and Czech boys. Not only in the Western European cities, such as Berlin and Amsterdam, do Romanian boy prostitutes constitute the majority, but also in large Eastern cities such as Budapest. The youngest Romanian boys are transported by adults while older teenage boys often travel alone or with a group of friends. Girls who are transported to the West are generally confined to bars and brothels, while the boys usually meet their customers outside, for example at railway stations. One area of growing concern in the Czech Republic is the addiction of children, mostly boys, to gambling, to the new freedom of exposure to casinos and the proliferation of gambling machines.

58. The Special Rapporteur has been informed by Russian and foreign sources that in Moscow, more and more young boys are being taught and forced to "work" as girls with clients. In 1992, the number of "young transsexuals" in Moscow was estimated at between 100 and 150; by 1995/1996, it had already risen to between 500 and 600, and it is continuing to grow. "Sexual re-profiling" of young boys is becoming more frequent in the Moscow area because of their cheaper availability as compared to the capitals and major cities of a variety of industrialized countries. Since 1995, the children becoming involved in this trade are no longer just those from poor and broken families. Increasingly, there has been an influx of children from well-to-do families of "new Russians", unable to resist the magnetic lure of material goods and amusements.

Table 2

"Re-profiled" boys up to 15 years of age in selected cities

| City (region, country) | Number (thousands) | Mean "nightly rate" (dollars) |
|---|---|---|
| Amsterdam - Rotterdam (Netherlands) | At least 2/approx. 2.5 | 650/740 |
| Miami - West Palm Beach (USA) | Approx. 3/3.3-3.5 | 600/approx. 750 |
| Yokohama - Yokosuka (Japan) | Approx. 2.5/3.3-3.5 | 670/approx. 800 |
| Colombo (Sri Lanka) | 10-13/at least 16 | 450/500 |
| Moscow | 0.1-0.15/0.5-0.6 | 400/approx. 700 |

Source: Rossûskaya Gazeta, 1 November 1996

59. In Germany, two men were recently jailed for the commercial sexual exploitation of children in Thailand, in the first case of its kind in Germany. The two Germans were charged with setting up a business in 1994 to produce pornographic material for sale to paedophiles, including photographs of 12 boys engaged in sexual acts with adults. It is claimed that there are in total almost 2,000 "Strichers" (boy prostitutes) in Berlin.

60. In Australia, the Police Royal Commission continues to reveal sickening examples of child sexual abuse. Recently, the case was heard in court of a wealthy multimillionaire, Philip Bell, who had sexually abused dozens of boys aged between 11 and 14 over a long period. The four boys who brought evidence against him all had severe psychological scars from this episode in their earlier life. A fifth had died of an overdose.

61. A new development in Chile is the involvement of hundreds of little girls as young as seven years in the field of prostitution. In the past five years it has also become evident that many boys as well as girls, see prostitution as the only way to survive.

62. In Acapulco, Mexico, the United States Postal Service closed down what it said was the biggest child pornography production and distribution ring United States law enforcement officials had ever seen. They began with a series of arrests in May 1996, and have exposed a $500,000-a-year business which was run by three United States citizens and was based in a high-priced hill-side home overlooking Acapulco Bay.

63. The Special Rapporteur has also been informed of recent reports concerning the exhibition of children performing sexual acts with animals in certain night clubs in Mexico. Six night clubs presenting this type of show have been identified in Mexico, and they are open to any member of the public who pays an entrance fee and consumes alcoholic drinks.

64. In Colombia, children who are compelled to leave their violent homes are often victimized by a system that uses punishment to "rehabilitate" and "protect" runaways. With nowhere else to go, many children live on the streets where they suffer increased violence and exploitation. In a study of 1,299 children in Bogota, a reported 389 children were involved in prostitution, 32 were beggars and 122 used drugs. In Bogota alone there was a 500 per cent increase in child prostitution among children aged 8 to 13 between 1986 and 1993. This is due to civil dislocation, poverty and drugs.

65. In Peru there is the phenomenon of the "fleeteo", boys 8 to 20 years old who live at home but prostitute themselves to supplement the family income or to buy drugs or new clothes. Some of these boys sell themselves to men only, while others offer themselves to both sexes.

66. In Brazil, young girls from outback mining communities, around 15 or 16 years old, are imported like chattel after being lured from isolated areas by traffickers promising them employment in the canteens and restaurants of the Amazonian mining towns.

67. The Dominican Republic shares some similar patterns with the situation in Thailand in that it has sex tourism beaches and beach resorts. There is also a particular Dominican Republic permutation on the use of young boys as prostitutes, known as the "hanky panky" boys. These are beach boys, some as young as 13 years old, who will stay with foreign tourists on the beaches on Boca Chica and Sosuam, for example, establishing a relationship with their visitor for years. This situation is more peculiar to the Dominican Republic than it is to other countries in the region.

68. In Costa Rica, there are over 2,000 child prostitutes in the capital city of San José alone. Costa Rica is notable because those who use child prostitutes there are almost entirely foreigners. As in the Dominican Republic, children selling sex are frequently offered to foreign paedophiles as part of a sex tour "package". The interaction between foreign tourists and child prostitution is therefore particularly pronounced in Costa Rica.

69. In Thailand, children's rights protection developments include the emphasis placed on the development of children's welfare by the National Economic and Social Development Plan VII (1992-1996). The Office of the Attorney General set up a Children's Rights Protection Office on 6 August 1995, which is responsible for cooperation among governmental

agencies and concerned NGOs to combat and to solve child abuse and child exploitation problems. The Office estimates that 20 per cent of girls between the ages of 11 and 17 could be prostitutes. 8/

70. The past few years have seen a huge influx to Cambodia of pornographic material, especially videos from Hong Kong and Thailand. They are freely available for purchase for about US$ 2 or can be viewed at one of many hundreds of video parlours and bars for as little as US$ 0.40. Several children, both male and female, have reported being made to watch pornographic videos and then carry out the same sexual acts with their adult clients.

71. In Nepal, groups working against the trafficking of children into prostitution report that the number of Nepali girls forced into slavery in the brothels across the border in India has reached nearly 200,000. Girls are sold for around 15,000 rupees. Corruption is reported to be present at practically all levels. It is also reported that parents, brothers and husbands are involved in trafficking to improve their own standard of living. The demand for virgin girls is increasing and the age of girls being trafficked to India is decreasing, with the average age in the last decade falling from between 14 and 16 years old to between 10 and 14 years old at present. The 500 mile long Indo-Nepalese open border has been the symbol of the friendship between the people of Nepal and India. However, for hundreds of thousands of Nepali women and children victims of illegal trafficking, this friendship border has proved to be a licence for sex slavery. Nepal appears to be the most significant, identifiable source of child prostitutes for Indian brothels. Thousands of Nepalese females under the age of 20 have been identified in India by various studies. The average age of the Nepalese girl entering an Indian brothel is said to be between 10 and 14, some 5,000 to 7,000 of them being trafficked between Nepal and India annually.

72. In India, an ILO report warned that tourists seeking boy prostitutes are flocking to Goa, where business is brisk enough to rival Bangkok. Freddy Peats, an Anglo-Indian found guilty of committing unnatural sexual offences against young boys in his custody, was sentenced to life imprisonment in the south of Goa. 9/ He had kept over 200 children in his custody since 1974, but had gained the respect of reputable sections of society, even claiming links with members of the clergy. Recent reports from India also refer to the plight of 76 Indian girls aged between 6 and 14 who were deported from Saudi Arabia after having apparently been sold or abandoned there. Although it is not yet clear how they came to be in Saudi Arabia, it appears that their parents took them with them on pilgrimage to Mecca. Some of the children claimed that they were taken there by their relatives for the express purpose of begging. Most of the girls were handicapped, emaciated and unable to speak clearly. Most had either a broken arm or leg, burn scars, broken teeth and hearing problems. Some of them maimed by their parents or relatives in order to turn them into more effective beggars. A spokesman of the Ministry of Foreign Affairs in New Delhi said that the girls had been lured away from their parents by "unscrupulous" locals and pressed into prostitution and forced labour. Special Branch officials in Bombay suspect the girls were "bought" by labour contractors, who are known to lure children away from poor parents in India for small sums of money to work as prostitutes and labourers

in the Middle East. Social activists said that thousands of Muslim girls from all over India had been "bought" by rich Arabs with the aim of selling them to Middle Eastern sheiks or local brothels.

73. In the past two decades there have been several instances of minors being forcibly married to octogenarians with physical disabilities and then legally taken out of India. Once in Saudi Arabia, their passports are confiscated and they are completely at the mercy of their "masters." 10/

74. In Cambodia, in 1990, the number of commercial sex workers in Phnom Penh was estimated at 1,500. The number increased rapidly during the United Nations Transitional Authority in Cambodia (UNTAC) supervised transitional period, which allowed an opening of the country after almost a decade and a half of international isolation. The Cambodian Women's Development Association now estimates that the number has increased to 17,000, of whom about 35 per cent are girls aged between 12 and 17. While Phnom Penh has seen a decline in the number of child sex workers compared to the UNTAC period (1991-1993), there has been an alarming decrease in the age of sex workers both in Phnom Penh and the provinces, according to all available indications from the Government and the NGOs.

75. Human Rights Vigilance of Cambodia, which conducted a rapid appraisal of child prostitution and trafficking in Phnom Penh and 11 provinces in April 1995, found that of the total of 6,110 prostitutes surveyed, 1,878 (30.7 per cent) were 17 years of age or under. The youngest child sex workers were 12 years old. The authorities in Phnom Penh, Kompong Sam, Battambang and Banteay Meanchey reported that between 29 and 33 per cent of prostitutes were 17 years of age or under. Largely not included in these surveys is a new vulnerable category: young boys, especially street children. It is undeniable that the vast majority of child prostitutes are young girls, but increasing paedophile activity involving young boys and both Cambodian and foreign men has been reported by agencies working on the issue. Cambodia is thought to be "a new frontier" for paedophilia because there is little legal enforcement infrastructure to protect children and little awareness of the problem on the part of the authorities. It is also believed by agencies that it could be a result of greater awareness and scrutiny in countries like Sri Lanka, Thailand and the Philippines traditionally frequented by paedophiles.

76. Women and girls deported across the border to Myanmar face great danger. Apart from the risk of being again abused by Myanmar authorities, they may be liable to further charges and sentences. The Immigration and Manpower Act of that country regards departure without preliminary official permission as an illegal act, deserving a penalty of 1,500 kyats or a 6-month jail term. Deported women and girls are reportedly often subject to further sexual abuse by soldiers in Myanmar. Furthermore, prostitution is illegal in Myanmar and carries a maximum three years' jail term.

77. In the United States, recent reports have revealed that convicted paedophiles have secretly compiled, annotated and stored lists of the names of thousands of children on computer, from within state prison compounds. The Federal Bureau of Investigation has targeted a convicted paedophile in a

Minnesota prison for almost two years. In this case, the list of names was stored with a large amount of child pornography, and the same computer was used to traffic in digital images of nude children and to exchange messages with paedophiles worldwide, linked by the Internet to sites such as "Kid Sex" and "Ped Net". 11/

78. Also with regard to the United States, the Special Rapporteur wishes to express her particular appreciation of the comprehensive training module developed since 1982 by the Office for Juvenile Justice and Delinquency Prevention, which is responsible for carrying out law enforcement training programmes on juvenile delinquency. Since 1983, training programmes on child abuse and sexual exploitation investigative techniques for local law enforcement officials have also been held nationwide. The training manual sets out techniques for tracing individuals who seek to have sex with children and for investigating cases involving the commercial sexual exploitation of children. Twenty thousand local law enforcement officials have already been trained through this four to five-day programme, which also allows for the participation for child protection officers and prosecutors. The objective of this multidisciplinary training is to avoid revictimization of the child and to ensure rehabilitation services for the child during the investigation. Computer child pornography constitutes a new component of the training and a pamphlet on computer exploitation investigation is currently being developed.

## IV. MODULE FOR TRANSLATING WORDS INTO ACTION

79. Making a commitment to do something to combat the sale, prostitution and pornography of children is not difficult. Governments agree with alacrity to take measures to protect children, as shown by the almost universal acceptance of the Convention on the Rights of the Child in such a short period of time.

80. Translating the commitment into action, however, is quite another matter. Most Governments, NGOs, or individuals wanting to contribute their efforts are daunted by the magnitude of the problems and find difficulty in even making a start in their search for solutions. The Special Rapporteur has therefore devised a module of steps that may be followed in order for the problems to be addressed in a more systematic way. The module is not intended as the only formula that may work, but merely as a guide for action that may be changed, modified or improved upon as the situation warrants.

### A. Analysis of the causes and problems in situ

#### 1. Determination of the cause or causes of the problem in the context of the place concerned

81. While it is recognized that commercial sexual exploitation of children usually has not just a single cause but a combination of causes, the main cause may be different from one country to another. Most children in developing countries become involved out of dire financial need, whereas for those in some developed countries the cause may be family breakdown or lack of parental concern or attention.

### 2. Determination of the percentage of girls as against the percentage of boys involved in prostitution and/or pornography

82. There are material differences in the patterns of involvement of girls vis-à-vis boys which would have to be established so that initiatives could be tailored to the situation. Some of these divergences are:

(a) Modes of recruitment;

(b) Places of operation;

(c) Entry point into commercial sexual exploitation;

(d) Extent of abuse suffered;

(e) Manner in which the children may extricate themselves from the exploitive situation;

(f) Physical, mental and psychological impact.

### 3. Determination of the composition of the source of demand in situ

83. Drying up the demand should always be a corollary measure to stemmming the supply. Strategies for places where the main source of demand is sex tourists would be different from those for places where the main source is, for example, military personnel or local residents.

## B. Inventory of resources

### 1. Statutory framework

84. All programmes and strategies must take into account the legal framework of the country pertaining to the welfare of children in general, and exploited and abused children in particular. Gaps and inadequacies can be identified which can be the basis for legislative action.

85. In this connection, in her interim report to the General Assembly the Special Rapporteur enumerated some key questions she considers would be helpful in the above effort. The questions concern substantive as well as procedural laws, and also the existence of mechanisms for reporting abuse.

### 2. Determination of available funds

86. Some very good programmes and initiatives fail to be implemented because they do not match up with the allocated financial resources. A review of funds, both available and potential, is therefore imperative. Advocacy measures should be addressed to motivating political will and upgrading children's concerns in the budgetary priorities of Governments. Other possible sources should likewise be explored, including non-traditional ones.

### 3. Identification of possible partners

87. The problems afflicting children are of such magnitude that no Government, no matter what the financial resources it has at its disposal, can solve them alone. While more effective performance by government agencies should be called for, cooperation and coordination with non-governmental organizations and the rest of civil society is not only desirable but necessary. Media organizations, parent-teacher associations, religious groups, community development organizations, children and youth groups, professional and business groups can all have crucial roles in assisting children.

88. The Special Rapporteur cannot overemphasize the value of cooperation between Governments and non-governmental organizations that are already involved in children's concerns. These non-governmental organizations are invaluable and indispensable partners as they usually have training in research and investigation, enjoy the trust of the community in most areas and are not constrained by pressure from higher authorities. However, the Special Rapporteur cannot help but note that in most instances the cooperative efforts are hampered by lack of coordination, not only between government and non-governmental organizations but also among non-governmental organizations themselves.

## C. Prioritization of strategies for action

89. A national agenda to prevent and combat child abuse and exploitation should be developed, with a time-frame for activities. This would necessitate prioritization of strategies for action, especially where resources are not unlimited. Such an approach would enable Governments to avoid shotgun solutions, which are more difficult both to implement and to monitor.

90. In the prioritization of strategies, the importance of preventive measures should not be forgotten and realistic, achievable goals should be set in order to encourage the intensification of efforts subsequently.

91. A next step after the setting of priorities would be the search for relevant partners for the chosen action. Should the first priority be awareness-raising, for example, the media would be an indispensable partner, together with other sectors. It is equally crucial that the chosen partners be first sensitized to the needs of children and that attention be given to a systematic allocation of responsibilities.

# V. SPECIAL FOCUS ON THE JUSTICE SYSTEM

92. The Special Rapporteur considers that a focus on the criminal justice system is of particular importance in connection with the commercial sexual exploitation of children. Although the following section has already been included in her report to the General Assembly at its fifty-first session (A/51/456), the Special Rapporteur reproduces it in full and invites the Commission to give special attention to the analysis and recommendations set out therein.

93. The justice system is among the three catalysts, the other two being the media and education, that the Special Rapporteur has identified as having crucial roles to play in the fight against child abuse in order to have a focused approach. It is reiterated that this is not intended to exclude other sectors that have just as important an impact on the problems.

94. The justice system can be a forceful ally of children on at least two levels: prevention of child abuse and exploitation, and avoiding secondary victimization of children in its response processes.

95. With regard to the preventive aspect, it is a known fact that abusers of children, local or international, proliferate where the perception is that the justice system is ineffective, or corrupt or insensitive to children's concerns. Conversely, where justice in a country is perceived to be speedy, incorruptible and particularly protective of children, child abusers perforce have to look elsewhere for their targets of abuse and perversion.

96. The first step in utilizing the justice system as a preventive tool, of course, is getting the child, or those acting on his or her behalf, to complain. Unhappily, however, despite appeals for strengthened children's rights, a child today often looks at the justice system as an enemy, rather than as a friend. This is because the justice system often fails to regard the child victim as a major claimant of protection in the legal processes.

97. Until very recently, protective laws and mechanisms, at both the national and international levels, have mainly addressed the needs of the accused. Very little attention has been paid to the equally important, if not more important, needs of the victim, and to the even more specialized needs of the child victim. The course of justice demands a proper balance between the rights of the child victim and the accused. This can best be achieved, at the very least, by measures to prevent secondary victimization of the child in the hands of those from whom he or she is seeking redress. The entire justice system is rife with entry points for further victimization, from the time of reporting abuse up to the time of, and even beyond, sentencing.

98. It is in this light that the following discussion focuses on some problems that may have to be addressed in order to achieve the goals of optimizing the capability of the justice system to be a strong deterrent of child abuse and avoiding adding further to the trauma and stigmatization of the child victim.

## A. Problem areas

### 1. At the national level

#### (a) Law enforcement

99. Law enforcement is a potent tool for prevention. Community policing, active surveillance and raids on sex markets, as well as high visibility of police officers as protectors of children, can send a strong and convincing message to the general public, to the victims and to the abusers. Greater emphasis must be placed on a sustained and consistent drive against child abuse.

100. The police are normally the child's first contact with the justice system. The child's first impression in the hands of the police sets the tone of trust or mistrust, cooperation or withdrawal, and a feeling of security and elation that at last somebody cares or a feeling of bewilderment and despair that the ultimate recourse under the rule of law is not made available to them. The following are some of the problem areas in law enforcement:

(a) The lack of a clear and comprehensive legal protocol, especially in the area of sexual abuse and exploitation, necessary to provide a strong base for action and for quality investigation and law enforcement. The lack of clarity in the law as to who is criminally culpable, for example, may lead to confusion in the detection and apprehension of abusers;

(b) The fear of transgressing into what may be considered to be purely domestic matters; the thin borderline between parental rights and discipline on the one hand and exploitation and abuse on the other, combine to deter effective zeal in the investigation and prosecution of abusers;

(c) Delayed or late reporting of abuse often affects the credibility of the child. Essential evidence is often lost, resulting in the failure to substantiate the elements required for an offence. If the child has already taken a bath, or has had his or her clothes washed, or let the bruises and other marks fade before reporting the incident, the police may question the veracity of the complaint;

(d) False reporting likewise hampers the police in effectively enforcing the law. One very common misrepresentation is made with respect to the age of the child, which may mean the difference between effecting an arrest or letting the offender go;

(e) Crimes pertaining to the sale and prostitution of children and child pornography are not yet considered mainstream crimes. They are usually sidelined by what are perceived to be the more urgent and dramatic police functions like investigation of murders, controlling riots, and detection and apprehension of drug dealers, among others;

(f) The police are normally well honed in the abuser-centred but not in the victim-centred approach. As already stated above, while the rights of the accused are already addressed not only in international documents like the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), but also in most national laws, the rights of the victim have yet to be similarly addressed. Insensitive handling by indifferent or untrained police officers gives rise to secondary or multiple victimization of the child, which may have more serious repercussions than the abuse being complained of. Disregard for the dignity of the child in the process of evidence-taking may aggravate the agony already suffered. The same thing happens when the identity of the child victim and the confidentiality of the proceedings are not respected;

(g) The lack of resources for the law enforcers presents a major stumbling-block in investigation and prosecution. The present trend towards globalization of the concerns of the mandate, and the involvement therein of highly sophisticated syndicated operators very often leaves the police far behind, making detection and pursuit very frustrating tasks;

(h) One of the factors causing discouragement on the part of law enforcement officers is the refusal of the victim to talk. Even where a case of abuse is brought to the attention of the police, a statement by the child victim is often essential before the police will even consider taking the case up. Fear of reprisal, however, especially where the offenders are the parents, deters the child from making a statement, leaving the police with no choice but to desist from further action;

(i) Quite often, police raids are conducted more as a hunt for children as violators rather than as an investigation of their abusers. The success of the raids is frequently measured by the number of children rounded up, not by the abusers arrested or by the children helped.

(b) Prosecution

101. After the police officer is satisfied that a crime has probably been committed, the case should be forwarded to the prosecution for evaluation as to whether it can be taken up in court. Here, again, there are problem areas:

(a) The inadequacy of the processes of evidence-gathering and statement-taking by the police may cause the prosecution either to dismiss the case or to disregard completely statements given by the child victim to the police, necessitating their being retaken and thereby compounding the trauma already suffered, especially when the prosecutor is untrained or insensitive to the rights of the child;

(b) Coercion by or undue influence of persons who have care of them cause child victims to retract statements already given to the police or simply to disappear and make themselves unavailable for the proceedings, weakening the case if not making it totally impossible for the case to be brought to the courts.

(c) The courts

102. Appearing in a court of justice is an experience not relished by most adults, no matter how educated or how sophisticated they may be. It is not surprising therefore that children feel absolutely petrified by the thought of having to appear before intimidating people in awesome surroundings. Some of the problem areas in this respect are:

(a) The conduct of the testimony of the child, both directly and on cross-examination. Getting the child to provide a credible recollection of events is one of the challenges the court must face. Delays in bringing the case to trial, the lack of family or institutional support, the age of the child, the mental and psychological damage suffered, and his or her lack of education may all conspire to undermine the quality of a child's evidence;

(b) Corollary with the above is the equally vital challenge of avoiding further damage and trauma to the child in the process of testimony-taking, having in mind the fact that the procedural rules in most countries apply indiscriminately to adults and children alike. Lack of special measures for the child witness may expose him or her to retaliation by the offender. It may also give the child the feeling that he or she is the one on trial, resulting in guilt and embarrassment. The feeling of not being believed can further erode whatever is left of the self-respect of the child;

(c) The problem of how to manage the child victim to ensure his or her presence when needed also applies at the trial stage;

(d) Difficulties in reconciling the rights of the accused with the rights of the child victim to protection. Some of the rights of the accused are guaranteed under the constitutions of many countries. These rights include:

(i) The right of the accused to bail. In countries where the offence is not serious enough to deprive the accused automatically of bail, it has been seen that child exploiters arrested in a foreign jurisdiction are very likely to jump bail;

(ii) The right of the accused to confront his or her accuser. This right runs counter to the fundamental right of the child to concealment of his or her identity and the confidentiality of the proceedings;

(iii) The presumption of innocence in favour of the accused. This presumption places the burden of proof on the child, which is often very difficult precisely because of the invisible and mobile nature of the abuse and the improbability of actually finding a criminal in the very act of abusing a child;

(e) The inequity caused by the dearth of resources of the child as compared with the resources available to the accused in most instances. This inequity has effects even on the quality of legal service;

(f) There is a serious problem of recidivism, particularly for offenders who are impelled by compulsive behaviour. Penalization may not always be the answer. Where child abuse is caused by compulsive and maniacal psychological illness, for example, the length of sentence of imprisonment is absolutely irrelevant and will not result in any remorse sufficient to deter future repetition of the same offence. Two issues arise from this situation: first, whether psychological deficiency exculpates the offender from criminal culpability and, second and more importantly, what course of action can be taken to ensure that such compulsive or maniacal behaviour does not give rise to victimization of other children.

(d) Recovery and reintegration

103. Recovery or rehabilitation are much more expensive, more difficult to implement and often fail to yield effective and sustainable results. They are the most difficult aspects of the entire process, both for the victims and for those helping them. The most efficient rescue programmes would be of little value unless coupled with some structure that would assist in the healing process of the child, physically and psychologically.

104. Attendant problems include the following:

(a) Recovery and reintegration is time-consuming and very expensive. A wide range of services would have to be included: food and shelter, placement in schools, skills training, medical and psychological help, and possible placement in foster families;

(b) While it is appealing to talk of a hope of reintegration into the family, especially in the case of child sex workers, there are several complications. For those children who have been raped by a parent, step-parent or relative, or have been sold by their own families, it is difficult to contemplate return. It is not unusual to hear of girls who repaid debts, went home and were sold again. Ostracism from their families and communities is also an added factor preventing children from returning home;

(c) There is generally a lack of awareness regarding the imperative need for treatment and recovery of victims. They are therefore invariably left to themselves, especially after the termination of the case. In instances where the prosecution of the case results in conviction of the offender, the victim is deemed to have received redress. Very often efforts at rehabilitation are concentrated on the offender rather than on the child victim.

2. At the international level

105. The prosecution of international crimes against children is extremely difficult, expensive and time-consuming. Not only are the substantive and procedural problems endemic, the national concerns and priorities may be dissimilar. Differences in language and legal systems and bringing the witness(es) from abroad further complicate the issue. Some of the pressing problems at the international level are:

(a) Disparity in the laws of the different countries concerned may act as an insurmountable barrier to effective prosecution of the case. The substantive provisions may relate to the elements of the offence, the penalties imposable therefor and the prescriptive periods for prosecution. For example, the use of a real child as a subject may be one of the elements for the crime of child pornography in one country, while in another visual imagery may be sufficient to sustain a conviction. Countries adopt different strategies in the penalization of offences involving abuse and exploitation of children. Some classify the crimes as minor, thereby making it more likely that they can be successfully prosecuted, whereas others classify them as serious and even heinous, thereby making them liable to the imposition of a

grave penalty. This imposition of a grave penalty may work as a deterrent at the national level where the offender is a citizen of the country in question, but it may have an adverse effect where foreigners are involved. International cooperation is difficult to achieve where there is a serious variance between the sentence imposable in the country of the offence and in the country of the offender. The issue becomes even more complex when there is a great difference in the nature of the penalty, as when in lieu of or in addition to imprisonment mutilation is inflicted;

(b) Lack of a workable arrangement between the countries where demand originates and the countries providing the "supply" of children. Such an arrangement should give prime consideration to crimes against children where trafficking is involved;

(c) Lack of a workable arrangement between countries to ensure the protection and safety of child victims of trafficking in the process of repatriation. Where children are victims of trafficking across frontiers, victimization can start with the retrieval of the children from their employers, and continue with the referral to immigration authorities prior to their repatriation, the manner in which the children are transported, their reception by the immigration authorities of their country of origin, and even their release to either their families or to welfare organizations;

(d) Foreigners in countries where there is no extradition treaty act with impunity because of the assurance that they are beyond the reach of the law after leaving the country where the abuse has been committed;

(e) Countries where the commercial abuse of children is not perceived as a problem may not be as concerned in the search for solutions, even if their nationals are participants in child exploitation activities. Eliminating the demand is an often forgotten facet of child protection. Attention is usually lopsided, focusing on the used rather than the user, seeking solutions addressing the source of supply without corollary measures to eliminate the demand for children;

(f) Modern technological advances pose a very serious problem to law enforcement in the field of pornography. Anonymity is available on the Internet. A user can manufacture virtually any identity and route from country A, through country B, to country C and then to country A again, where it would be impossible to determine the origin of the first message. The industry is also experiencing rapid development of cheap, user-friendly encryption software, which is employed by child pornographers. Decoding the files is often extremely difficult for law enforcement agencies. An individual may now trade images of almost any kind from one end of the world to the other.

106. Even if law enforcement officials discover the image, the ability to distribute it may not be impaired. Once an image is introduced on the Internet, it can be downloaded by any number of users and can be reproduced repeatedly without any loss of quality.

## B. Recommendations

### 1. At the national level

#### (a) Law enforcement

107. The police force, as a system, and its internal organization must change and adapt to the care of children. The seriousness of offences against children must be acknowledged, both through formal policy of the force and through informal internal norms. This change has to be visible in terms of programmes and in terms of the exercise of authority and power.

108. The Special Rapporteur, therefore, calls upon States to:

(a) Institute regular training and sensitization programmes for specialized police officers appointed to deal with child victims, adopting a victim-centred approach;

(b) Prepare a police manual on procedures for handling children, to avoid secondary victimization during the investigation process;

(c) Initiate reform against corruption and inefficiency within the police force, if required, to restore public confidence;

(d) Establish operational mobile units for the surveillance of places where children are at greater risk;

(e) Ensure effective enforcement of laws aimed at protecting children by, inter alia, providing incentives to law enforcement officials and by encouraging cooperation with non-governmental and community-based organizations;

(f) Involve the community and encourage its active participation in the law enforcement process, especially in monitoring abuse and exploitation of children.

#### (b) Criminal proceedings in the courts

109. The rights and interests of children should be safeguarded throughout the proceedings, while the rights of the accused are also respected. The confidentiality of records and respect for the fundamental right of the child victim to privacy must be ensured by avoiding the disclosure of any information that could lead to their identification. It must also be ensured that the conditions at the hearings involving child victims respect the dignity of the children and do not exacerbate their trauma. The physical and psychological well-being of the child victim may outweigh the right of the accused to confront his or her accuser.

110. In this connection, the Special Rapporteur urges that:

(a) Courts give child victims pseudonyms to conceal their identity;

(b) Records such as negatives, audio tapes and photographs be destroyed, subject only to such exceptions as the court may determine, in which case, those not destroyed should be sealed and not be made available without the permission of the court.

(c) Sight-separation procedures should be observed during hearings through, inter alia, any of the following means:

(i) One-way closed circuit television testimony;

(ii) A two-way system in which the child witness is permitted to see the courtroom and the accused on a video monitor, and the judge and/or the jury are permitted to view the child during the testimony;

(iii) Deposition, if the court is satisfied that attendance before a court of the child victim would involve serious danger to his or her life or health.

111. States should ensure improved access to legal and other remedies through the joint cooperative action of the formal legal institutions and quasi-legal or non-formal personnel, such as non-governmental organizations and community leaders, who can help to safeguard and protect children at the grassroots level.

112. States should promote dialogue between all relevant agencies involved in the justice system with a view to preventing problems, protecting children and providing remedies where necessary. Improved networking is essential at all levels, including among members of the community and the mass media.

### 2. At the international level

113. The search for solutions cannot be undertaken successfully by countries in isolation especially where there is cross-border trafficking or where the abused and the abuser are of different nationality. Regional and worldwide cooperation is indispensable. However, no single magic formula can work for all countries and every country will ultimately have to determine for itself how to remedy its own situation, taking into account its particular political, social and cultural circumstances.

114. In this connection the Special Rapporteur calls on all States to cooperate through:

(a) Determining priority countries with which closer coordination is needed to prevent trafficking in children;

(b) Exploring with these countries the possibilities for establishing cooperation through:

(i) Synchronizing laws on the elements of crime against children, on the nature and length of the penalties imposable and on rules of procedure, especially in evidence-taking;

(ii) Arrangements by which abusers in a foreign country may be subject to prosecution either where the offence took place or in the country of the offender. This could be done either through extradition or expansion of jurisdiction through extraterritoriality. With respect to extradition, there should be analysis of how extradition between countries could be effectively designed. It should be noted that for some States extradition is an available alternative, even without a treaty, on the basis of the national law of both of the States concerned;

(iii) Negotiation and application of multilateral conventions in regions that share a similar political, legal and social system;

(iv) Submission of requests for mutual judicial assistance in criminal matters, which is allowable in the legal order of virtually all countries;

(c) Quick and accurate exchange of information between law enforcement agencies and the judiciary internationally should be developed in order to ensure the thorough investigation, prosecution and conviction of perpetrators and the protection of the child victims. The national police should likewise work closely with Interpol and immigration authorities to curb trafficking and related activities;

(d) A central registry for missing children should be set up on both a national and a regional basis to facilitate the identification and tracing of the child victims;

(e) The exchange of lists of paedophiles between different countries should help to prevent the repetition of offences by the same persons, and should be encouraged;

(f) The police, customs officials and postal officials need to coordinate their efforts more closely to curb the circulation of pornographic materials. This entails both bilateral and other arrangements;

(g) Consultations and the exchange of training programmes among law enforcement authorities at the international level to deal with transnational trafficking in children. For example, one cooperative method of preventing or assisting in combating exploitation of children is the assignment by States of police personnel in countries to which their nationals travel in large numbers, in order to track the behaviour of their own nationals where there is a threat to the children of those countries. The repatriation of children to their country of origin should also be safeguarded by cooperation between the relevant agencies so that the children are not further subjected to humiliating and degrading treatment or abuse.

## VI. PROPOSALS FOR FOLLOW-UP TO THE WORLD CONGRESS AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

115. The Special Rapporteur expresses her strong support for the Stockholm Declaration and Agenda for Action and urges all States to comply without delay with the commitments they made at the World Congress. To this end, the Special Rapporteur emphasizes the need for immediate follow-up action, particularly at the international level, in order to sustain the political momentum so successfully achieved by the World Congress.

(a) The Special Rapporteur wishes to endorse the call by the Stockholm Congress to States urgently to strengthen comprehensive, cross-sectoral and integrated measures with a view to elaborating by the year 2000 national agendas for action for and indicators of progress towards the elimination of commercial sexual exploitation of children, with set goals and a time frame for implementation.

(b) States are also urged to develop implementation and monitoring mechanisms at national and local levels for overseeing national action, as requested in the Stockholm Agenda for Action.

(c) The Special Rapporteur would particularly like to emphasize the recommendations made by the Congress which focus on mobilizing the business sector, including the tourism industry, against the use of its networks and establishments for the commercial sexual exploitation of children and on encouraging media professionals to develop strategies which strengthen the role of the media in providing information of the highest quality, reliability and ethical standards concerning all aspects of the commercial sexual exploitation of children.

116. In particular, the Special Rapporteur would like to put forward the following proposals for consideration by the Commission on Human Rights:

(a) All States are urged to engage in systematic and regular data gathering, in order to be able to assess the extent of the problem of commercial sexual exploitation at the national level. Attention should be paid to collecting data reflecting the various types of commercial sexual exploitation as distinct from sexual abuse, and the gender and the age of victims.

(b) In order fully to use the potential of the media as partners in prevention, intervention and rehabilitation, it is imperative to provide them with a view to providing them with a deeper understanding of the issues at hand, with a view to avoiding potential re-victimization. Such sensitization could best be carried out by professionals, such as child psychologists and child psychiatrists. States are, therefore, called upon to consider convening of an international convention bringing together media and child psychologists/psychiatrists to address the issue of the commercial sexual exploitation of children.

(c) Another crucial issue that should be explored in follow-up to the Stockholm Congress is that of child pornography and new information technologies, such as the Internet. In this regard, the Special Rapporteur put forward the idea of involving private computer and information technology companies, as well as Internet service providers, for example as sponsors, in initiatives to eliminate and raise awareness of the commercial sexual exploitation of children.

## Notes

1/ For details, see the report on the mission of the Special Rapporteur to the United States (E/CN.4/1997/95/Add.2).

2/ "She's 12, Innocent and a Slave for Life", International Herald Tribune, 22 January 1997.

3/ "Special report on plight of orphans in crime-hit refugee camps", Sunday Express, 25 August 1996.

4/ "Sexual abuse of children in Zimbabwe", Report of an Action Research Project, Child and Law in Zimbabwe Project, December 1994.

5/ The Scotsman, 12 August 1996.

6/ Child trade in Nigeria, Constitutional Rights Project, Nigeria, September 1996.

7/ The Guardian, 31 August 1996.

8/ The Effects of Prostitution and Sexual Exploitation on Children and Adolescents, Patricia Jennifer Green, Rahab Ministries, Bankok, 1993.

9/ Herald, Panjim, 22 March 1996.

10/ Daily Telegraph, 15 January 1997.

11/ The New York Times, 18 November 1996.

## Annex

## QUESTIONNAIRE RELATING TO THE JUSTICE SYSTEM AS A CATALYST FOR THE PROTECTION OF CHILDREN FROM EXPLOITATION THROUGH SALE, PROSTITUTION AND PORNOGRAPHY

Chart 1

Q1 Is sale of children a criminal offence in your country?

Q2 If so, who is criminally liable?

Q3 Has there been any prosecution in your country for the sale of children?

Q4 If yes, do you think the number of cases filed approximate the number of actual violations?

Q5 Is child prostitution a criminal offence in your country?

Q6 If so, who is criminally liable?

Q7 Has there been any prosecution in your country for child prostitution?

Q8 If yes, do you think the number of cases filed approximate the number of actual violations?

Q9 Is child pornography a criminal offence in your country?

Q10 If so, who is criminally liable?

Q11 Has there been any prosecution in your country for child pornography?

Q12 If yes, do you think the number of cases filed approximate the number of actual violations?

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Chart 2

Q13 If these offences are crimes in your country, at whose instance may the complaint be brought to court?

Q14 Is the child entitled to legal assistance?

Q15 Who has custody of the child prior to the trial?

Q16 Is the confidentiality of the identity of the child protected?

Q17 Are there any sanctions for the violation of this confidentiality?

Q18 Upon the filing of the case, who is notified?

Q19 Are there protection programmes for the physical security and safety of the child prior to and during the trial of the case?

Q20 Is the hearing conducted publicly?

Q21 Are there specialized prosecutors, judges and social workers assigned to the case?

Q22 Are there rehabilitation programmes for the child both as a victim and as the accused?

Q23 Are there socio-behavioural scientists (psychiatrists, psychologists) assisting in these rehabilitation programmes?

Q24 How effective are they?

Chart 1

| | Relating to sale of children | | | | Relating to child prostitution | | | | Relating to child pornography | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Question No. | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| ARGENTINA | Y | A | Y | N | Y | A/Pi | Y | N | Y | E | Y | N |
| AUSTRIA | N | | N | NR | N | | NR | | Y | NR | Y | NR |
| BAHRAIN | Y | E | N | | Y | E | NR | | Y | E | NR | |
| CANADA | N | | Y | NR | Y | E | Y | N | Y | NR | Y | NR |
| CHAD | N | NR | NR | NR | N | | NR | | N | | NR | |
| CZECH REP. | Y | P/G | N | | Y | E | Y | N | Y | E | Y | N |
| ETHIOPIA | Y | NR | NR | NR | Y | E | NR | | Y | NR | NR | NR |
| FRANCE | Y | D | NR | NR | N | E | NR | N | Y | E | NR | N |
| GERMANY | Y | A | NR | | N | A/Pi | NR | NR | Y | E | NR | NR |
| GUATEMALA | N | | N | | Y | A/Pi/C | N | N | N | A/Pi/C | NR | NR |
| IRAN (ISLAMIC REP. OF) | Y | NR | Y | NR | Y | NR | Y | NR | Y | NR | N | NR |
| JAMAICA | Y | E | N | | Y | E | N | NR | Y | E | N | N |
| JORDAN | Y | E | NR | | Y | A/Pi | NR | | Y | E | NR | |
| MALTA | N | | N | | Y | E | Y | N | Y | E | N | |
| MOROCCO | Y | E | Y | NR | Y | NR | NR | | Y | E | NR | |

Key to symbols

A - Abuser/ Accused/ Perpetrator
C - Child
D - Depends on the circumstances
E - Every person directly involved
J - Judge
N- No
NR - Not Reported
P - Prosecutor
P/G - Parent or Guardian
Pi - Pimp
O - Police
S - State
SW - Social Worker
Y - Yes

Chart 1 (cont.)

| | Relating to sale of children | | | | | Relating to child prostitution | | | | Relating to child pornography | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Question No. | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| MYANMAR | Y | PI | Y | NR | Y | A/PI | Y | NR | Y | A | Y | NR |
| PHILIPPINES | NR | NR | NR | NR | Y | A/PI | Y | N | Y | E | Y | N |
| RUSSIAN FED. | NR | NR | NR | NR | N | NR | NR | | N | NR | NR | |
| SAN MARINO | N | | NR | | Y | E | NR | | Y | E | NR | |
| SPAIN | N | | N | | Y | A/PI | Y | NR | Y | E | NR | |
| SRI LANKA | Y | E | Y | NR | Y | A/PI | Y | N | Y | E | N/Y | N |
| THAILAND | Y | E | Y | NR | Y | A/PI | Y | N | Y | E | Y | N |
| TURKEY | NR | NR | NR | NR | Y | E | NR | | NR | NR | NR | NR |
| UKRAINE | N | NR | NR | | Y | NR | NR | NR | Y | NR | NR | NR |
| UNITED KINGDOM | Y | NR | N | | N | E | Y | N | Y | E | Y | N |
| UZBEKISTAN | N | | N | | N | | N | | N | | N | |
| ZIMBABWE | Y | NR | N | N | Y | A/PI | N | N | Y | E | Y | N |

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Chart 2

| | Relating to pre-trial proceedings | | | | | Relating to the trial | | | | Relating to rehabilitation | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Question No. | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| ARGENTINA | P | Y | P/G | Y | Y | P/O/C | Y | Y | Y | Y | Y | Y |
| AUSTRIA | C | Y | D | Y | Y | P/G | Y | D | N | Y | NR | |
| BAHRAIN | S | Y | S | Y | Y | E | Y | N | Y | Y | | |
| CANADA | S | NR | O | D | Y | D | Y | D | D | Y | Y | Y |
| CHAD | S | Y | D | Y | Y | NR | N | N | N | Y | N | N |
| CZECH REP. | P | Y | G | Y | Y | P/SW | Y | D | N | Y | Y | N |
| ETHIOPIA | P/G,P | Y | P/E | Y | Y | P/G,P, O,SW | NR | N | N | Y | NR | |
| FRANCE | P | Y | D | Y | Y | NR | NR | D | Y | Y | Y | NR |
| GERMANY | P/E | Y | P/E | D | N | A | Y | D | Y | N | N | |
| GUATEMALA | C,P/G, P | Y | P/G | D | NR | A,P,C | Y | D | D | Y | Y | N |
| IRAN (ISLAMIC REP. OF) | NR | Y | P/G | Y | Y | P/G | Y | Y | N | Y | Y | Y |
| JAMAICA | C,P/G, S | Y | D | Y | Y | E | Y | N | Y | Y | Y | NR |
| JORDAN | P/G,C | Y | P/E | NR | NR | E | D | D | N | N | N | |
| MALTA | | Y | P/E | D | Y | E | D | D | N | Y | Y | Y |
| MOROCCO | P/G,P | Y | D | Y | Y | A,P/G | Y | Y | N | NR | | |

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O - Police
S - State
SW - Social Worker
Y - Yes

Chart 2 (cont.)

| | Relating to pre-trial proceedings | | | | | Relating to the trial | | | | Relating to rehabilitation | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Question No. | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| MYANMAR | P/G,C, S | Y | S | Y | Y | P/G,S W | Y | N | Y | Y | N | |
| PHILIPPINES | C | Y | D | Y | Y | P/G,P, A | Y | NR | NR | NR | NR | NR |
| RUSSIAN FED. | S,P/G, C | Y | D | N | N | P/G | Y | NR | N | N | NR | |
| SAN MARINO | C | D | NR | Y | Y | C,P/G | Y | Y | Y | Y | Y | NR |
| SPAIN | E | Y | D | Y | Y | E | Y | D | N | Y | NR | |
| SRI LANKA | P/E | Y | S | Y | N | A,P/G | Y | N | N | Y | N | Y |
| THAILAND | C,P/G, S | Y | P/G,S | Y | Y | C,SW | Y | N | Y | Y | Y | Y |
| TURKEY | S,C,P/ G | NR | NR | NR | NR | NR | NR | NR | NR | NR | NR | NR |
| UKRAINE | P | D | NR | NR | NR | NR | NR | NR | NR | Y | Y | NR |
| UNITED KINGDOM | O,P | Y | P/G | Y | Y | D | Y | D | N | Y | Y | NR |
| UZBEKISTAN | E | Y | P/G | NR | | E | Y | N | Y | NR | NR | |
| ZIMBABWE | S | Y | D | Y | Y | P/G,S W | Y | N | N | Y | N | |

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